

AUTHORITY FOR DESIGN-BUILD

CONSTRUCTION

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill enacts a provision relating to the procurement of a design-build project.

Highlighted Provisions:

This bill:

- ▶ authorizes the state and certain counties and cities to enter into a design-build contract for certain capital improvement projects;
- ▶ establishes a process for prequalifying potential bidders on the design-build contract;
- ▶ establishes a process for issuing requests for proposals and awarding a design-build contract; and
- ▶ imposes requirements on the successful bidder under a design-build contract.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

63-56-36.2, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:



Section 1. Section **63-56-36.2** is enacted to read:

63-56-36.2. Procurement of design-build project contracts.

(1) As used in this section:

(a) "Design-build project" means a capital improvement project that is unique and is excessively complex or has unusual limitations on completion schedules.

(b) "Design-build project contract":

(i) means the procurement of both the design and construction of a design-build project in a single contract with a company or combination of companies capable of providing the necessary engineering and construction services; and

(ii) does not include a design-build transportation project contract, as defined in Section 63-56-36.1.

(c) "Procuring agency" means:

(i) the state or a department or other agency of the state;

(ii) a county of the first or second class, as defined in Section 17-50-501; or

(iii) a city of the first class, as defined in Section 10-2-301.

(2) (a) A procuring agency may award a design-build project contract that has an estimated cost of \$1,000,000 or more as provided in this section.

(b) No other governmental or quasi-governmental state entity or political subdivision of the state may enter into a design-build project contract.

(3) (a) (i) Each procuring agency intending to enter into a design-build project contract shall assess the qualifications of potential contractors by issuing a request for qualifications.

(ii) Each procuring agency issuing a request for qualifications shall give public notice of the request in accordance with public contracting requirements.

(b) (i) Before issuing a request for qualifications for a design-build project contract, each procuring agency intending to enter into a design-build project contract shall:

(A) employ one or more persons experienced in and qualified to manage design-build projects;

(B) establish a budget for the proposed design-build project; and

(C) establish the criteria upon which the proposals for the design-build project will be evaluated, including:

(I) price;

59 (II) schedule for interim and final completion dates; and

60 (III) architectural design.

61 (ii) A budget established under Subsection (3)(b)(i)(B) is a protected record under
62 Subsection 63-2-304(6).

63 (c) (i) Each request for qualifications under Subsection (3)(a) shall:

64 (A) require each potential contractor to demonstrate its:

65 (I) construction experience;

66 (II) design experience;

67 (III) management experience;

68 (IV) financial, manpower, and equipment resources that are available for the project;

69 and

70 (V) experience with other design-build projects with attributes similar to the
71 design-build project that is the subject of the design-build project contract that the procuring
72 agency intends to enter into; and

73 (B) state that the minimum number of potential contractors eligible to propose a bid for
74 the design-build project contract is three.

75 (ii) (A) With respect to the experience and resources required to be demonstrated as
76 provided in Subsection (3)(c)(i)(A), each procuring agency shall establish the minimum
77 requirements that are reasonably necessary to carry out the design-build project.

78 (B) In establishing minimum requirements under Subsection (3)(c)(ii)(A), each
79 procuring agency shall make every reasonable effort to foster competition, include as many
80 potential contractors as possible, and provide opportunities for potential contractors to diversify
81 into new types of construction projects.

82 (d) (i) Each procuring agency shall:

83 (A) evaluate each response received from the request for qualifications;

84 (B) select from those submitting responses those qualified to submit proposals for the
85 design-build project contract; and

86 (C) invite those selected to submit proposals based on the procuring agency's request
87 for proposals, as provided in Subsection (4).

88 (ii) In applying the criteria used to evaluate the responses from a request for
89 qualifications, the procuring agency:

(A) shall:

(I) consider price to be responsible for at least 50% of the evaluation score; and

(II) consider the schedule for interim and final completion of the design-build project to be responsible for at least 20% of the evaluation score; and

(B) may not base its selection of those qualified to submit proposals on anything other than the minimum requirements.

(iii) If a procuring agency receives less than three responses from potential contractors that the procuring agency determines to be qualified to submit proposals, the procuring agency shall reissue a request for qualifications as provided in this Subsection (3).

(4) (a) Each procuring agency that receives at least four qualified responses to a request for qualifications shall issue a request for proposals to the qualified respondents.

(b) Each request for proposals shall:

(i) include a detailed scope of work statement constituting an information for proposal that shall include:

(A) preliminary design concepts;

(B) design criteria, needs, and objectives;

(C) square footage of the project and specific uses of the project;

(D) type of construction and architectural style;

(E) warranty and quality control requirements;

(F) applicable construction and other standards;

(G) environmental documents;

(H) physical, financial, and other constraints;

(I) time expectations or limitations;

(J) contract incentives or disincentives;

(K) insurance requirements including:

(I) errors and omissions insurance;

(II) liability insurance;

(III) workers' compensation insurance; and

(IV) bonding requirements, including bid bond, payment bond, and performance bond;

and

(L) other special consideration; and

121 (ii) require each potential contractor submitting a proposal to provide:
122 (A) a sealed price proposal that includes:
123 (I) a cost-plus price, with a guaranteed maximum price, for the direct cost of
124 construction; and
125 (II) a fixed-price or percentage fee, as the request for proposal directs, for:
126 (Aa) design cost;
127 (Bb) management of the project, including job specific overhead;
128 (Cc) overhead that is not job specific; and
129 (Dd) profit;
130 (B) a critical path matrix schedule, including cash flow, manpower, and equipment
131 requirements;
132 (C) proposal or bid security; and
133 (D) other items required by the procuring agency for the design-build project.
134 (c) A request for proposals may include an award of a stipulated fee to be paid to
135 potential contractors that submit unsuccessful proposals.
136 (5) Each procuring agency that receives proposals on a design-build project shall:
137 (a) open the proposals as provided in Subsection 63-56-20(4);
138 (b) evaluate the proposals received in response to the request for proposals from those
139 qualified to submit proposals;
140 (c) establish and comply with rules relating to discussion of proposals, best and final
141 offers, and evaluations of the proposals submitted; and
142 (d) after considering price and other identified factors, award the design-build project
143 contract to the responsible bidder whose proposal is most advantageous to the state and its
144 political subdivisions.
145 (6) Each successful bidder:
146 (a) shall:
147 (i) be subject to and responsible for the enforcement of all of the provisions of this
148 chapter for the procurement of construction; and
149 (ii) let subcontracts and supply contracts for portions of the design-build project in
150 accordance with the public procurement procedure in Section 63-56-20; and
151 (b) may not perform any portion of the work itself unless;

- 152 (i) the successful bidder advertises and lets such work out to bid to other
153 subcontractors as provided in Section 63-56-20;
154 (ii) the successful bidder submits its own bid for the work, prior to the bid opening,
155 which is priced as if the bid were to be submitted to another contractor in an arms length
156 transaction; and
157 (iii) the successful bidder is the successful bidder for that portion of the work.
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Legislative Review Note
as of 2-3-05 11:21 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0289**Authority for Design-Build Construction***14-Feb-05**12:39 PM*

State Impact

This bill would limit the use of design/build construction methods to capital facility projects costing \$1,000,000 or more. This may add 3.5% to 6% traditional design costs on some projects under \$1,000,000 which frequently are most cost effectively built under the design/build approach. It may also extend the time before construction can begin, therefore increasing costs due to inflation. Total cost impact will depend on the size and scope of future approved capital facilities.

Individual and Business Impact

Design professionals may benefit by a requirement to do traditional design on projects costing less than \$1,000,000 which would otherwise be eligible for the design/build approach.

Provisions of this bill also apply to counties of the first or second class, and to cities of the first class.

Office of the Legislative Fiscal Analyst